

Submission of Title IX Implementation Plans

June 30, 2001



STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY

State Capitol
Nashville, Tennessee 37243-0260
(615) 741-2501

John G. Morgan
Comptroller

April 30, 2002

The Honorable John S. Wilder
Speaker of the Senate
The Honorable Jimmy Naifeh
Speaker of the House of Representatives
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243

Ladies and Gentlemen:

Transmitted herewith is the report on the submission of Title IX implementation plans. This review was conducted pursuant to the requirements of Section 4-4-123, *Tennessee Code Annotated*.

Sincerely,

John G. Morgan
Comptroller of the Treasury

JGM/lab

Submission of Title IX Implementation Plans

June 30, 2001

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
Authority	1
Objectives of the Review	1
Scope and Methodology of the Review	1
Purpose and Scope of Title IX	2
Applicability	3
Federal Department of Education	3
Policy 22	4
OBSERVATIONS AND COMMENTS	4
Filing Title IX Complaints of Discriminatory Practices	5
CONCLUSIONS	6
Title IX Implementation Plans	6
Summary	6
APPENDIX	7
Status of Title IX Implementation Plans	7

Submission of Title IX Implementation Plans June 30, 2001

INTRODUCTION

AUTHORITY

Chapter 758 of the Public Acts of 1998 (Section 4-4-123, *Tennessee Code Annotated*) requires those state agencies subject to the requirements of Title IX of the Education Amendments Act of 1972 to develop a Title IX implementation plan. These plans were to be submitted to the Department of Audit by June 30, 1999, and are to be submitted each June 30 thereafter.

Section 4-4-123 further requires the Department of Audit to publish, at least once a year, a cumulative report of its findings and recommendations concerning compliance with the statute's requirements. Pursuant to that directive, this report will identify the plans submitted to the Department of Audit.

OBJECTIVES OF THE REVIEW

The objectives of the review were to summarize the purpose and scope of Title IX and to detail agencies' compliance with the reporting requirements in *Tennessee Code Annotated*, Section 4-4-123.

SCOPE AND METHODOLOGY OF THE REVIEW

The Title IX plans submitted to the Department of Audit are the result of a self-reporting process in which each agency drafts its own plan. The Division of State Audit's review of the agencies' plans was limited to whether the plans had been submitted.

In addition, telephone interviews were conducted with every agency Title IX Coordinator primarily to determine the number of Title IX complaints filed against respective agencies from July 1, 2000, to June 30, 2001.

Accordingly, we do not attempt to express an opinion on the implementation of the provisions in the plans. Rather, this review will be limited to determining if Title IX implementation plan documents were submitted.

PURPOSE AND SCOPE OF TITLE IX

Title IX of the Education Amendments of 1972, as codified in 20 U.S.C. 1681 et seq., states:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

The law is intended to prohibit discrimination on the basis of gender in any educational program or activity that receives federal funds. It ensures legal protection against discrimination based on gender for both students and employees, and includes protection against sexual harassment. With some exceptions, Title IX covers all aspects of an educational program or activity, and prohibits discrimination in

- Admissions
- Treatment of students, including access to programs and courses; access to and use of school facilities; counseling and guidance materials, tests, and practices; vocational education; physical education; competitive athletics; graduation requirements; student rules, regulations, and benefits; the treatment of married and/or pregnant students; housing; financial assistance; health services; school-sponsored extracurricular activities; and most other aid, benefits, or services
- Employment, including access to employment, hiring and promotion, compensation, job assignments, leaves of absence, fringe benefits, and labor organization contracts or professional agreements

Title IX does not apply to educational institutions controlled by religious organizations; to military and merchant marine educational institutions; or to the membership practices of social fraternities and sororities, the YMCA, the YWCA, Girl Scouts, Boy Scouts, Camp Fire Girls, and voluntary youth service organizations that are exempt from taxation under Section 501(a) of the Internal Revenue Code of 1954.

Public Chapter 758 is similar to Public Chapter 502 of 1993, which requires state agencies subject to Title VI of the Civil Rights Act to develop annual implementation plans. The two laws are both intended to prohibit certain types of discrimination in programs that receive federal money although Title VI is much broader in application. Title VI prohibits discrimination on the basis of race, color, or national origin in all programs that receive federal funding, while Title IX prohibits discrimination on the basis of gender in federally funded education programs and activities.

APPLICABILITY

The law applies to “every recipient and to each education program or activity operated by such recipient which receives or benefits from Federal financial assistance.” For example, Title IX applies to the Tennessee Department of Education (the recipient of federal funding from the U.S. Department of Education) and Tennessee’s local education agencies (the subrecipients of federal funding from the U.S. Department of Education) because all of these benefit from federal assistance. The law also applies to the Tennessee Board of Regents and the University of Tennessee Board of Trustees and their subrecipients, the state’s colleges and universities.

As a recipient of federal financial assistance for education activities, the requirements of Title IX of the Education Amendments Acts of 1972 are applicable to any entity to which federally funded financial assistance for education activities is extended. According to the Comptroller of the Treasury’s 1999 report, *Without Regard to Gender, Tennessee State Agencies and Title IX of the Education Amendments of 1972*, for the purpose of compliance with federal and state laws, state departments and agencies should be aware of the following:

- Recipients of federal funding for educational programs or activities are subject to Title IX, even if the federal agency that provides their funding has failed to issue implementing regulations.
- State departments or agencies that receive federal funding and have any type of educational program or activity, whether or not the federal money is used directly for that educational program or activity, are subject to the provisions of Title IX.

FEDERAL DEPARTMENT OF EDUCATION

Because Title IX is usually linked with K–12 and higher education programs, the regulations issued by the U.S. Department of Education are most widely cited. The other federal departments’ Title IX regulations differ in some respects because of the various programs administered, but all contain at least the following components, modeled after the Department of Education’s regulations:

- Required written assurances
- Designation of an employee to coordinate investigations
- Regular dissemination of nondiscriminatory policy to applicants, students, and employees
- Adoption of grievance procedures for complaints

POLICY 22

In Policy 22, a state-developed approach to uniform monitoring of subrecipients of state and federal funding, the Department of Finance and Administration developed core areas to ensure uniformity in monitoring efforts, including the verification that civil rights requirements are being met. In addition, Policy 22 requires each state agency that funds subrecipients to develop a plan to address their monitoring needs. Plans should identify subrecipients, describe the process and risk criteria used to select and prioritize subrecipients for monitoring purposes, include sample-monitoring manuals for each state and/or federal program, and identify a staffing plan. Once an agency has identified whether subrecipients are low, medium, or high risk, Policy 22 directs the agency to perform various tests to determine compliance. The adoption of Policy 22 should improve state agencies' awareness of their civil rights responsibilities, including those under Title IX.

OBSERVATIONS AND COMMENTS

The Comptroller of the Treasury's Office of Education Accountability report entitled *Without Regard to Gender, Tennessee State Agencies and Title IX of the Education Amendments of 1972*, issued in March 1999, noted that for the most part, state agencies appeared to be unaware of their responsibility to comply with Title IX. See Conclusions for the status of submission of implementation plans for fiscal years 2000 through 2002.

According to the report, the federal government has not fully implemented and enforced Title IX. In recent years, the federal government has sent "mixed signals" to states about Title IX. Although Title IX became law more than 25 years ago, federal implementation and enforcement have been somewhat uneven. Some federal agencies that should have issued federal regulations addressing Title IX have failed to do so. In addition, critics contend that many educational institutions, having embraced Title IX in some respects, still do not comply with the law in many areas.

In October 1998, the Office of Education Accountability surveyed state agencies (other than the Department of Education and the university systems) that receive federal funding to determine whether the agencies conducted educational programs or activities and, if so, whether they were implementing Title IX. The results were varied, with several state agencies indicating that they conduct some type of educational program or activity, but few indicating familiarity with or implementation of Title IX.

The Comptroller's Office requested an attorney general's opinion in the fall of 1998 in an attempt to clarify state agencies' Title IX responsibilities. On February 19, 1999, the Office of the Attorney General issued Opinion No. 99-035. According to the opinion,

1. As a general rule, if a state agency directly or indirectly receives federal financial assistance and conducts an education program or activity that benefits from the assistance, the state agency must comply with Title IX throughout the operations of the entire agency, although there may be exceptions to this rule. To determine whether and how Title IX applies to a state agency will require a fact-specific inquiry.
2. Title IX will apply even if the agency received federal financial assistance from a source other than the U.S. Department of Education.
3. One criterion for application of Title IX is that the Federal financial assistance directly or indirectly benefits an agency's education program or activity. The Federal financial assistance need not be earmarked for the education program or activity for Title IX to apply.

FILING TITLE IX COMPLAINTS OF DISCRIMINATORY PRACTICES

Executive Order 12250, November 2, 1980, authorizes the U.S. Attorney General to coordinate the implementation and enforcement by executive agencies of the nondiscrimination provisions of Title IX of the Education Amendments Act of 1972.

The U.S. Department of Education's Office for Civil Rights (OCR) is authorized to investigate Title IX complaints or conduct compliance reviews within agencies that receive funding from the department or agencies that have delegated authority to it.

Title IX regulations require that entities adopt grievance procedures "providing for the prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited" by Title IX. Entities that have adopted grievance procedures for Title VI, for example, may be able to use the same grievance procedures for Title IX and other civil rights laws.

During fiscal year 2001, one state agency, the Board of Regents, received a Title IX complaint. We reviewed the current status of the complaint.

An African-American female alleged that a Tennessee State University Art Department staff member improperly denied her work-aid. She also alleged that the staff member improperly disclosed information related to her marital and economic status to her boyfriend, who is the staff member's nephew. TSU's Equal Opportunity/Affirmative Action office found insufficient evidence to support a finding of discrimination but recommended that the staff member receive a written reprimand for improperly disclosing information. The staff member was reprimanded in May 2001.

CONCLUSIONS

TITLE IX IMPLEMENTATION PLANS

As of October 1, 2001, most state agencies that are required to submit a Title IX Implementation Plan for fiscal year 2002 had done so. The appendix on the following page presents the status of Title IX implementation plans submitted for fiscal years 2000 through 2002.

SUMMARY

The true measure of successful compliance will not hinge so much on whether plans have been prepared and submitted but rather on whether the provisions contained in the plans are actually carried out. Currently, the Department of Education does not have the statutory authority to review, monitor, and enforce Title IX compliance.

The Division of State Audit's financial and compliance audit reports of agencies subject to the requirements of Title IX of the Education Amendments Act of 1998 will include material violations of Title IX requirements noted during the audit. Reports issued through March 31, 2002, contain no findings addressing violations of Title IX.

Appendix

Status of Title IX Implementation Plans As of March 31, 2002

<u>State Entity</u>	<u>FY 00 Plan Submitted</u>	<u>FY 01 Plan Submitted</u>	<u>FY 02 Plan Submitted</u>
Administrative Office of the Courts	No plan submitted	No plan submitted	08/14/01
Department of Correction	06/30/99	No plan submitted	07/03/01
Department of Education	06/29/99	06/30/00	06/29/01 Received 07/03/01 Revised
Department of Environment and Conservation	No plan submitted	No plan submitted	07/13/01
Department of Finance and Administration	No plan submitted	06/30/00	06/29/01
Department of Human Services	No plan submitted	06/28/00	10/01/01
Department of Labor and Workforce Development	No plan submitted	No plan submitted	No plan submitted
Department of Mental Health and Developmental Disabilities	No plan submitted	No plan submitted	No plan submitted
Department of State	No plan submitted	No plan submitted	No plan submitted
Tennessee Board of Regents	No plan submitted	07/05/00	07/24/01

<u>State Entity</u>	<u>FY 00 Plan Submitted</u>	<u>FY 01 Plan Submitted</u>	<u>FY 02 Plan Submitted</u>
Tennessee Student Assistance Corporation	No plan submitted	06/30/00	06/29/01
University of Tennessee	No plan submitted	06/26/00	07/03/01
Tennessee Wildlife Resources Agency	06/30/99	No plan submitted	08/21/01

The following agencies have reported that they are not subject to Title IX requirements:

Commission on Aging and Disability	Military Department
Office of the Attorney General and Reporter	Board of Probation and Parole
Alcoholic Beverage Commission	Department of Revenue
Arts Commission	Department of Safety
Commission on Children and Youth	Tennessee Bureau of Investigation
Department of Agriculture	Tennessee Corrections Institute
Department of Children's Services	Tennessee Housing Development Agency
Department of Commerce and Insurance	Tennessee Regulatory Authority
Department of Economic and Community Development	Tennessee Higher Education Commission
Department of General Services	Tennessee Human Rights Commission
Department of Health	Department of Transportation
Council of Juvenile and Family Court Judges	Department of the Treasury
District Attorneys General Conference	Department of Tourist Development
District Public Defenders Conference	Department of Veterans' Affairs
Health Facilities Commission	